

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA . CRIMINAL NO. 10-10264-RGS
V. . CRIMINAL NO. 14-10074-RGS
MICHAEL DAVID SCOTT . BOSTON, MASSACHUSETTS
Defendant . DECEMBER 10, 2014

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
Victor A. Wild, Esq.
One Courthouse Way, Suite 900
Boston, MA 02210
617-748-3145
victor.wild@usdoj.gov

COLLORA LLP
William Keefe, Esq.
100 High Street, 20th Floor
Boston, MA 02110
617-371-1005
wkeefe@collorallp.com

Court Reporter:

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

MARYANN V. YOUNG
Certified Court Transcriber
Wrentham, MA 02093
(508) 384-2003

1 (Case called into session)

2 (3:43:15 PM)

3 THE CLERK: The court for the District of
4 Massachusetts is now in session. The Honorable Marianne
5 Bowler presiding the case, December 10, 2014. The case
6 USA v. Scott, Criminal Action Nos. 14-10074 and 10-10264
7 may now be heard.

8 Will counsel. Please identify themselves for
9 the record?

10 MR. WILD: Good afternoon, Your Honor, Victor
11 Wild for the government.

12 THE COURT: Thank you very much.

13 MR. KEEFE: Good afternoon, Your Honor, William
14 Keefe for Mr. Scott and, Judge, I wanted to mention that I
15 spoke with Ms. Silva today and she was asking me on behalf
16 of Mr. Kettlewell and herself that I be, that I be a stand
17 in for them with respect to a couple of things that are on
18 the docket here today?

19 THE COURT: Do you have any objection?

20 MR. WILD: I don't know what those issues are,
21 but no I don't have any objection.

22 THE COURT: Okay. It would appear not to be a
23 problem. All right, I have on the docket the two entries,
24 entries in each case, 249 and 44, the government's motion
25 for an order. There's no opposition, correct, Mr. Keefe?

1 MR. KEEFE: Is this the motion requesting that
2 we--

3 THE COURT: This is the motion for an order
4 authorizing and directing Middleton to address the
5 defendant's healthcare.

6 MR. KEEFE: Well, I guess I do object on cert--

7 THE COURT: Well the time has run, am I not
8 correct, Mr. Garvin? What are the filing dates?

9 THE CLERK: Fourteen, the 2014 case and same,
10 same for the 2010.

11 MR. KEEFE: Well I think I've filed--

12 THE COURT: So the time has run. I mean--

13 MR. KEEFE: I think I filed the one paragraph
14 objection to his pleading and I think I addressed the
15 production of the medical records.

16 THE COURT: Well it's not docketed as an
17 opposition.

18 MR. KEEFE: Is it document number 44 maybe?

19 THE COURT: 44 is the motion in one case. Okay,
20 okay, it's docketed as a response.

21 MR. KEEFE: Yeah.

22 MR. WILD: May I attempt to assist the Court?

23 THE COURT: Sure.

24 MR. KEEFE: I guess, Your Honor, one thing that
25 I wanted to remark was, I know Your Honor has had the

1 motion for release on conditions under advisement. I
2 guess my perspective on it was that if that, if that were
3 acted upon and the Court ruled in the defendant's favor,
4 the Court mentioned that the Court might, might consider
5 releasing him on a humanitarian grounds, that if the Court
6 were to rule in the defendant's favor on that then this
7 issue of having a hearing with jail officials to determine
8 what kind of medical care--

9 THE COURT: Yeah.

10 MR. KEEFE: --they can provide, would be
11 somewhat moot. I guess that's why I--

12 THE COURT: Well I guess I want to know what the
13 status of things, I want to know whether or not the house
14 is his home is still secured? There was some talk at the
15 last hearing that it might be foreclosed upon. What is
16 the status there?

17 MR. KEEFE: I don't think there's any
18 foreclosure proceedings that have been initiated. The
19 primary mortgage--

20 THE COURT: Is it delinquent?

21 MR. KEEFE: The primary mortgage is in arrearage
22 several months, but I don't think it's in danger of being
23 foreclosed upon or lost in the immediate future.

24 THE COURT: Well, has there been any
25 notification from the bank? I mean--

1 MR. AWAL: Yeah.

2 MR. KEEFE: If I could speak with his wife
3 briefly.

4 PAUSE

5 MR. KEEFE: She says no foreclosure notice has
6 been sent or she hasn't received it.

7 THE COURT: How many months behind?

8 MR. KEEFE: I believe six, Judge.

9 THE COURT: And who's the holder of the
10 mortgage?

11 MR. KEEFE: Ocwen Bank, Judge.

12 THE COURT: How is that spelled?

13 MR. KEEFE: O-C-W-E-N?

14 THE DEFENDANT: Yes.

15 THE COURT: Ocwen. And what is available - as
16 of this date, what is available to be posted?

17 MR. KEEFE: I'm sorry to be, what?

18 THE COURT: To be posted.

19 MR. KEEFE: My most, the motion for release on
20 conditions listed a residence on Hartford Street, a
21 condominium that is owned by his wife's aunt who is
22 present in Court, Ms. Monica Ellis and there's
23 approximately \$100,000 secured bond that I was proposing.
24 The residence at 10 Hartford Street in Dorchester, Unit 2
25 was assessed and a recent appraisal done at my request, I

1 think at approximately \$230,000, Your Honor. I have
2 payoff statements which there are two mortgages, \$100,000
3 primary mortgage, a \$28,000 secondary mortgage and with
4 the second mortgage being paid down, I believe there's a
5 \$100,000 in it.

6 THE COURT: So about \$100,000 in equity?

7 MR. KEEFE: Yeah, I think the government did a
8 memorandum today said there's \$95,000, but I checked with
9 Attorney Mendoza who put this together and she said
10 conservatively there's a 100 with evidence of the payoff
11 statements.

12 THE COURT: You want to be heard, Mr. Wild?

13 MR. WILD: I do, Your Honor, and if I may go
14 back to the Court's first inquiry of defense counsel.

15 I filed a motion which was nothing more than but
16 I think significant asking the Court to authorize and
17 direct the Middleton Medical facility personnel to
18 disclose the prognosis, their treatment plan, the
19 availability of more treatment plans if it became
20 necessary, how they would respond to anything if it became
21 worse for the defendant, how they've responded to date,
22 all because the defendant raised as a claimed basis for
23 release that he wasn't being properly treated at the
24 medical facility. As we've discussed before, this is the
25 facility to which U.S. Marshals sends people if they have

1 medical issues. It's an excellent facility. They have
2 24/7 service available and they also have immediate ties
3 to emergency rooms and hospital inpatient if that were
4 ever to become necessary. You have nothing before you of
5 any recent history suggesting that he is not being
6 properly treated there. So my motion was nothing more
7 than to protect the medical facility people so that they
8 could disclose all of the particulars of the medical
9 treatment and inform that the Court properly of what's
10 available to him so the Court didn't have lingering
11 concerns about whether he was currently being treated
12 properly or would be treated properly. But they of course
13 need the protection for disclosure purposes. They need
14 the protection of the Court order. That's all my motion
15 was. I think it's significant but that was my motion.

16 The response that you received out of time was
17 to say that to the extent the government is requesting his
18 historical personal medical records pre-detention, he has
19 no objection to the Court getting those, doesn't want the
20 government to get them, which is a totally separate issue
21 and if he wants to provide those to the Court, I don't
22 have any concern about that. I am somewhat aware of this
23 Court's history in medical matters. Prior representation
24 of the government is significant medical matters. You
25 certainly could understand those records better than I

1 could. So I don't have any problem if he wants to
2 provide the historical records to you. My motion was not
3 about that. My motion was to protect the medical
4 personnel at Middleton so that they could discuss those
5 matters and fully inform the Court before it relied upon
6 any claim that there was some terrible overarching medical
7 need that wasn't being met because I don't think that's
8 true. I do suspect, Your Honor, that if you did receive
9 the historical medical records of the defendant pre-
10 detention, you'd probably find that he's had issues like
11 this before. The one thing I will say is that if he
12 really has medical issues he's in a 24/7 medical facility
13 and I'm not suggesting that we--

14 THE COURT: I mean there's no allegation that
15 he's not getting the medications.

16 MR. WILD: None. There was apparently one
17 incident when they did not immediately have available the
18 medication he was customarily using. They supplanted it
19 with something else and then put him immediately back on
20 his ordinary medication. So I think that before the Court
21 were to consider releasing him on the basis of medical
22 claim, at a minimum the Court would need to hear from the
23 medical personnel to say, this really isn't the issue that
24 the defendant is attempting to make it to be. That was
25 the medical issue.

1 Now on the release issue, Your Honor, the Court
2 inquired last time about the status of the property at 40
3 Old Stable Drive in Mansfield. That's the residence. The
4 agents on the case did some checking and I've provided
5 defense counsel a copy of this on a prior occasion and
6 again in connection with my memorandum that I filed two
7 days ago on the ninth where I addressed the issue. Very
8 briefly but, it looks as if the property is assessed by
9 the Town of Mansfield at \$622,800 but there are loans.
10 There are more than the one that has been mentioned to
11 you. There are at least three outstanding loans. It
12 appears to be four actually, totaling approximately
13 \$1,239,000 against the property. Now even if one of those
14 was a line of credit that may have been used to pay off a
15 prior existing lien, it looks as if the remaining three
16 liens total \$984,000.

17 THE COURT: Nine hundred and--

18 MR. WILD: Eighty-four thousand dollars. In
19 other words, essentially half more than the appraised
20 value of the property, and as the report that came from
21 pretrial service to the Court said I think a week ago or
22 two weeks ago, the property is in arrears. Also counsel's
23 letter to the Court when considering counsel's arguments
24 at the last hearing that there be property put up as
25 collateral, his own letter said we don't have any property

1 we can put up as collateral and that's--

2 THE COURT: Well we've got the aunts condominium
3 now.

4 MR. WILD: Right, but his letter said I don't
5 have any personal property I can put up as collateral. I
6 submit, Your Honor, it's because they're all over-
7 mortgaged, overleveraged and that this, I suspect this is
8 not the only property in arrears but certainly this one is
9 in arrears. As I say in my memorandum, there's very
10 little property interest to keep this defendant available
11 to the Court when he's facing the kind of sentence that he
12 is as I laid out--

13 THE COURT: The guideline range again.

14 MR. WILD: Yes, Your Honor, in my memorandum I
15 refer to both cases. In the first case it looks as if the
16 guidelines were 210 to 262 months together with forfeiture
17 of assets. That has been enhanced now by three levels
18 because of the commission of offenses while on release,
19 and so now it looks to be 292 to 365 months, and that's on
20 the original case. Then there's an additional calculation
21 of 51 to 63 months on the second case. He has no property
22 interest that would suggest to him that he should stay in
23 the District of Massachusetts to face this kind of
24 sentencing and forfeiture of assets. As to the family
25 ties he involved his own wife in the frauds in which he

1 was engaged. As I laid out in my memorandum there were
2 50 buildings that he participated in the purchase of that
3 were multi-unit and then those multi-units were
4 immediately converted to condos, aggregating about 180
5 condos. The general theme was buy the property without
6 down payment from the purchasers because they were flipped
7 and then when they were flipped, they were flipped to
8 purchasers that they, the defendant and others acting with
9 him including co-defendants charged in the original case
10 recruited to act as straw buyers using their credit,
11 telling them that these were investment properties and
12 then there were loan applications that were falsified in
13 order to support those mortgages. Some of the people
14 bought more than one property and listed more than one
15 property as a primary residence when none of the people
16 were primary residents of those properties but they also
17 enhanced their income, their assets, the defendant
18 personally is charged with and two defendants have already
19 pleaded guilty to assisting him in obtaining false
20 verifications of deposits from Bank of America. They are
21 former Bank of America employees who have admitted that
22 they did that for Mr. Scott so that if someone were
23 recruited as a buyer and their assets didn't qualify for
24 the loan he would simply go to Bank of America to one of
25 these two people. He paid them money for their services.

1 They would dummy up a verification of deposit to support
2 an enhanced loan application. And so purchasers were
3 duped into acting as buyers for properties he was first
4 buying and then flipping as condominiums. I Segway from
5 that, Your Honor, to the aunt of his wife. I submit that
6 this Court should not permit her to be duped. This
7 defendant has already told the Court, I promise you I will
8 appear. You ordered, because he was suspect at the time
9 as a releasee, you ordered a \$200,000 bond but with \$50
10 secured. That's already forfeited if he's convicted in
11 the new case because it's a condition of release that he
12 not commit offenses. If he violated the conditions that
13 \$50,000 of his own money is forfeited. Plus he owes you
14 an additional, I don't mean you personally, Your Honor, he
15 owes the Court an additional \$150,000. He immediately
16 engaged in the conduct charged in count, in the second
17 case four months after release, at least as early as that.
18 If this defendant is willing to commit the kinds of
19 offenses he did while on release, and there's that other
20 violation as well where he traveled out of state without
21 permission, and Gina Afsa was writing that up for the
22 Court. If he's willing to forfeit his own funds of
23 \$200,000, if he has duped all of these other people into
24 becoming buyers under his scheme and they have now
25 suffered credit destruction, their lives have been turned

1 upside down as a result of it, and mind you, this is 180
2 condominium units that were involved.

3 THE COURT: Do we have victims in the courtroom?

4 MR. WILD: I'm sorry?

5 THE COURT: Do we have victims in the courtroom
6 today?

7 MR. WILD: We have a victim from the, I think
8 the victim from the second trial, second case. He may not
9 have received the notice of the change of date. He's
10 appeared at every other hearing, but no we don't have
11 victims of the first case here at the present time, but,
12 Your Honor, when this defendant is willing to do that kind
13 of thing to other people, when he's willing to put his own
14 wife at jeopardy by making her a buyer of properties with
15 him and one of the charged properties in the indictment is
16 22 Elmore Street, he made her the sole purchaser of the
17 building and, therefore, she was his sole seller of three
18 units in that building that are charged in the indictment
19 as fraudulent new loans. He put his own wife at jeopardy
20 to operate his own scheme and yet he wants to tell you I
21 wouldn't jeopardize my family. I wouldn't jeopardize
22 other people but he's made a living doing that including
23 his own wife.

24 THE COURT: Mr. Keefe--

25 MR. KEEFE: Yes, Your Honor?

1 THE COURT: --in the event the house is
2 foreclosed, where would he go?

3 MR. KEEFE: Your Honor, I know there's another,
4 a number of family members that live in the Boston area.
5 I haven't discussed with him specifically as to what
6 residence he and his wife and three children would move to
7 but--

8 THE DEFENDANT: We have a house on the Cape.

9 MR. KEEFE: --they still own a house on Cape Cod
10 that I think we heard about last time was the subject of
11 certain liens but is not in foreclosure or near
12 foreclosure.

13 THE COURT: And what's the equity in that?

14 MR. KEEFE: That property did not have equity.
15 It was mortgaged perhaps to its appraised value and it's
16 also the subject of a lien from a lawsuit that he's part
17 of, but he does own the house and I think there's a paid
18 tenant in the residence?

19 THE DEFENDANT: Yes.

20 THE COURT: I don't see anything in the pretrial
21 services report about family in the area.

22 THE DEFENDANT: I do have family, my mother, my
23 sister.

24 MR. KEEFE: Yeah, his mother, his sister, I
25 think his wife has family in the area, so Judge, on the

1 issue of--

2 THE COURT: The mother is no longer in Florida?

3 Is that correct?

4 THE DEFENDANT: She lives here. She was looking
5 to move but she's here. She's in Mansfield.

6 MR. KEEFE: She's living in Mansfield he tells
7 me.

8 THE COURT: In the family home?

9 THE DEFENDANT: In the condo. I own a condo
10 down the street.

11 MR. KEEFE: There's a condo down the street that
12 she lives in.

13 THE COURT: Well he says he owns it. Does he
14 have equity in that?

15 THE DEFENDANT: No, it's just that the market
16 crashed so it's upside down.

17 MR. KEEFE: No, he says no, Judge.

18 THE COURT: Seems to be an echoing story.

19 MR. KEEFE: Well, Judge, on the medical grounds
20 issue I did want to mention a couple of things and I
21 haven't gotten updated medical records from today or from
22 last week, but he tells me that there were three days last
23 week, Thursday through Saturday when the medical unit at
24 Middleton told him that they'd run out of both Labetalol
25 and Chlorthalidone, those are two of the blood pressure

1 medicines that he's supposed to be taking on a daily
2 basis. He tells me his blood pressure levels are still
3 fluctuating wildly. We did hear, we have a letter from
4 Dr. Hunt who says that some of these blood pressure levels
5 that she reads from the medical records are dangerously,
6 dangerously high and are putting his health at risk. You
7 know, I have no doubt that by jail standards Middleton may
8 be a good or the best local county lock up that provides
9 medical services to its inmates, but I think it's fair to
10 conclude that the care given at any jail is not ideal and
11 certainly not what he would be receiving from Dr. Hunt who
12 he's treated with for many years. There are seven, eight
13 hundred inmates at Middleton and I know that they're
14 understaffed and probably very overworked and--

15 THE COURT: Well in reviewing the records I mean
16 he seems to be being monitored quite religiously I would
17 say.

18 THE DEFENDANT: That's at my request.

19 MR. KEEFE: Yeah, these are all at his request,
20 Judge.

21 THE COURT: I mean he's getting his diabetes
22 medication, he's getting his Crestor.

23 MR. KEEFE: And I don't know - he says that this
24 is all at his request, and I do know that the director who
25 I think has been mentioned by the government as perhaps

1 somebody who would come here, was just fired last week
2 for, supposedly for some HIPPA violations. So I think his
3 medical issues while being detained remains a significant
4 concern as echoed in Dr. Hunt's letter.

5 With respect to his wife Judge, they've been
6 married for over 15 years. They obviously live together.
7 They have three children, 12, and two twins that are eight
8 years old. She's never been charged. She's never been a
9 target of this investigation as far as I can tell. I
10 understand--

11 THE COURT: And what's her immigration status?

12 MR. KEEFE: She's a Naturalized United States
13 Citizen, as is he. She, you know, I understand that the
14 company, a company was started many years ago between two
15 couples, my client, his wife and another couple and that
16 the wives purchased a handful of the properties, but
17 there's nothing other than that to suggest that she has
18 any role in the first indictment that Mr. Kettlewell and
19 Silva represent them on, and on that case Judge, I mean I
20 can't speak for what the guidelines are. I know that a
21 major part of this case was a motion to suppress that
22 Judge Stearns allowed which excludes a significant amount
23 of evidence I'm told by Mr. Kettlewell and that that case
24 now has a June or July trial date and it very well may be
25 triable according to his lawyers in that case and in this

1 case I think it's a, you know, four year or 51 month low
2 in, low in--

3 THE COURT: And he had, at the time of arrest he
4 had multiple passports?

5 THE DEFENDANT: No.

6 MR. KEEFE: No, I'm not aware of that, Judge.

7 THE COURT: Well the report says the defendant
8 is willing to surrender his passports.

9 MR. KEEFE: Yeah, he has a United States
10 passport, and I think he maintains dual citizenship with
11 Trinidad. I don't know if those have been turned in but--

12 THE COURT: Well two makes it multiple.

13 THE DEFENDANT: I have a United States passport
14 which the government has since 2009, and I have a Trinidad
15 passport which the United States doesn't recognize it as
16 dual citizenship.

17 MR. KEEFE: All right, he's not a dual citizen
18 but he has a Trinidadian passport. Where is that
19 passport?

20 THE DEFENDANT: It's with the government.

21 MR. KEEFE: All right, the government has both
22 passports and they've had both since 2009 so--

23 THE DEFENDANT: I voluntarily gave it.

24 MR. KEEFE: So, you know, I'm still going
25 through the discovery in this case. I mean this case I

1 know that I represent him on was part of a civil action
2 that was filed by the victim and the case was about to be
3 settled when he was indicted. She was going to be
4 reimbursed as part of a negotiated settlement 100%. Now
5 his aunt--

6 THE COURT: How much was involved in that case?

7 MR. KEEFE: What was the total settlement that
8 one, 199?

9 THE DEFENDANT: 199.

10 MR. KEEFE: So that was a good, approximately
11 200,000, Your Honor. So his aunt, his wife's aunt is in
12 Court. She's seated in the front row off to your left,
13 Your Honor.

14 THE COURT: Would you ask, I'd like her to
15 stand.

16 MR. KEEFE: I've spoken with her and she is very
17 aware of what she's doing. She has known Mr. Scott for
18 many, many years. She cares for him deeply she tells me,
19 and she has expressed to me that she is freely and
20 voluntarily doing this because she is concerned.

21 THE COURT: Do you understand that if you post
22 this property and if the defendant flees or fails to abide
23 by any condition of release that I might set that you
24 could forfeit this property? You would have to forfeit it
25 to the government.

1 DEFENDANT'S AUNT: Yes.

2 THE COURT: Do you understand that?

3 DEFENDANT'S AUNT: Yes.

4 THE COURT: And if you were to do it would you
5 be doing it willingly, freely, and voluntarily?

6 DEFENDANT'S AUNT: Yes, Your Honor.

7 THE COURT: All right thank you. You may be
8 seated. Let me take a brief recess. I'll see pretrial.

9 (Court in recess)

10 (4:07:11 PM)

11 (Court back in session)

12 (4:11:40 PM)

13 THE COURT: All right, having conferred with
14 pretrial services and looked at everything before me at
15 this time, I'm ordering the defendant's detention to be
16 continued in which case I find your motion moot at this
17 time, Mr. Wild. The defendant's remanded to the custody
18 of the United States Marshals.

19 Mr. Keefe, on the 14 case, if you want your
20 client here for another minute, do we need another status
21 date?

22 MR. KEEFE: I'd like one, Your Honor, yes.

23 THE COURT: All right.

24 MR. WILD: Your Honor, may I address that?

25 THE COURT: Yup.

1 MR. WILD: We have made full disclosure. It's
2 a very simply straightforward case. There are two
3 witnesses who are husband and wife. One who has come to
4 every hearing so we know that they are very interested in
5 pursuing the matter.

6 THE COURT: They're present in the courtroom?

7 MR. WILD: Not today.

8 THE COURT: Not today.

9 MR. WILD: That's the one that I mentioned. I
10 think--

11 THE COURT: Yeah, all right.

12 MR. WILD: --may not have gotten the amended
13 notice.

14 THE COURT: All discovery's done?

15 MR. WILD: Essentially all of discovery is done.
16 The only thing that may remain is some 404(b) and there's
17 a timeline on disclosing that. The governments prepared
18 to take this to trial late January, early February,
19 subject to Judge Gorton's calendar. I don't think there's
20 any discovery left to do.

21 THE COURT: Well shall I send it up and say it's
22 unclear whether it be a trial or a plea?

23 MR. KEEFE: I'd ask Your Honor, for one more
24 status conference. Part of this case, Judge, involves an
25 allegation that certain email communications traveled

1 electronically through boxes, interstate and I'm in the
2 process of securing a computer person, a computer expert
3 to help review the discovery with me so that I can
4 understand it a little better.

5 THE COURT: I'll give you 30 days and call it a
6 final status conference. How does that sound, Mr. Keefe?

7 MR. KEEFE: That's fine, Your Honor.

8 THE CLERK: The 12th at 2:30.

9 THE COURT: January 12th at 2:30, and you agree
10 to exclude the time from today until that date?

11 MR. KEEFE: I do, Your Honor.

12 THE COURT: All right, and will you file a
13 motion to that effect, Mr. Wild?

14 MR. WILD: Yes, Your Honor, although I'm
15 reluctant to say it's a joint motion but yes, I will.

16 THE COURT: Well it doesn't have to be joint
17 just file it, you know.

18 MR. WILD: I understand.

19 THE COURT: All right.

20 MR. WILD: Thank you, Your Honor.

21 THE COURT: All right.

22 (Court adjourned)

23 (4:13:45 PM)

1 CERTIFICATION

2 I, Maryann V. Young, court approved transcriber,
3 certify that the foregoing is a correct transcript from
4 the official digital sound recording of the proceedings in
5 the above-entitled matter.

6

7 /s/ Maryann V. Young

July 20, 2015

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25